

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING CHAPTER 17 OF THE BRYAN CITY CODE, ENTITLED “MISCELLANEOUS OFFENSES”, BY ADDING SECTION 17-8, ENTITLED “CURFEW HOURS FOR JUVENILES”; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING PENALTIES; PROVIDING A SUNSET PROVISION; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THE ORDINANCE WAS PASSED WERE OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City of Bryan is experiencing among the highest violent and property crime rates per capita of any midsize city in Texas; and

WHEREAS, juvenile violence and property crimes, and juvenile gang activity in the City of Bryan is a major contributing factor in escalating such crime rates; and

WHEREAS, juveniles under 17 years of age are particularly susceptible, because of their lack of maturity and experience relative to adults, to participation in unlawful activities and gang-related activities, and to victimization by older perpetrators of crime; and

WHEREAS, the City of Bryan is obligated to provide for the protection of juveniles from each other and from other persons, the protection of the health, safety, and welfare of the general public, and the reduction of juvenile crime, violence, and gang-related activity in the City; and

WHEREAS, a curfew for juveniles under 17 years of age will aid in the achievement of these goals, and will be in the interest of the public health, safety, and welfare;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS:**

The city council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this ordinance.

Section 1.

That Chapter 17 of the Bryan City Code is hereby amended by adding Section 17-8 as follows:

**Sec. 17-8. Curfew hours for juveniles.**

(A) *Definitions.* In this section:

- (1) *Chief of police* means the Chief of Police of the City of Bryan or a designated representative.
- (2) *Curfew hours* means the time between 12:00 midnight until 5:00 a.m. on any day of the week.

- (3) *Direct route* means the shortest path of public travel to reach a final destination without any detour or stop along the way.
- (4) *Emergency* means, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury, loss of life or damage to or loss of property.
- (5) *Establishment* means any privately-owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.
- (6) *Holding location* means a place designated by the chief of police to which a juvenile taken into custody for a violation of this section will be delivered to await pickup by a parent, responsible adult or juvenile authorities.
- (7) *Juvenile* means any person under 17 years of age.
- (8) *Operator* means any individual, firm, association, partnership, corporation or other form of entity or association, including the owners, members, managers, partners, officers, agents and employees thereof as applicable, operating, managing, or conducting any establishment.
- (9) *Parent* means a person who is:
  - (a) a natural or adoptive parent or step-parent of another person;
  - (b) a court-appointed guardian to have the care and custody of another person; or
  - (c) at least 21 years of age and authorized by a parent or court-appointed guardian to have the care and custody of another person.
- (10) *Public place* means any street, alley, highway, sidewalk, playground, park, plaza, building, or other place used by or open to the public.
- (11) *Remain* means to:
  - (a) linger or stay; or
  - (b) fail to leave premises when requested to do so by a police officer or the owner, operator or other person in control of the premises.

(B) *Offenses.*

- (1) A juvenile commits an offense if he or she remains in any public place or on the premises of any establishment within the city during curfew hours or fails to return home by a direct route from such public place or

establishment after being asked to leave by a police officer or the owner, operator or other person in control of the premises.

- (2) A parent of a juvenile commits an offense if he or she knowingly permits, or by insufficient control allows, the juvenile to remain in any public place or on the premises of any establishment within the city during curfew hours.
- (3) The owner or operator of an establishment, commits an offense if he or she knowingly allows a juvenile to remain upon the premises of the establishment during curfew hours.

(C) *Defenses.*

- (1) It is a defense to prosecution under subsection (B)(1), (B)(2), or (B)(3) of this section that the juvenile was:
  - (a) accompanied by the juvenile's parent;
  - (b) on an errand at the direction of the juvenile's parent and was using a direct route;
  - (c) in a motor vehicle or mode of transportation involved in interstate travel;
  - (d) engaged in an employment activity, including but not limited to newspaper delivery, and was using a direct route;
  - (e) involved in an emergency;
  - (f) on the sidewalk abutting the juvenile's residence;
  - (g) attending an activity supervised by adults and sponsored by a school, governmental entity, church, civic or charitable organization or similar entity that takes responsibility for the juvenile with the consent of the juvenile's parent or going to or returning home by a direct route from any such activity;
  - (h) engaged in, participating in, or traveling to or from any event, function or activity to which the application of subsection (B)(1) of this section would contravene the juvenile's First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly ; or
  - (i) married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code.
- (2) It is a defense to prosecution under subsection (B)(3) of this section that the owner or operator of an establishment, or any employee or agent

thereof, promptly notified the police department that a juvenile was present on the premises of the establishment during curfew hours and refused to leave.

(D) *Enforcement.*

- (1) A police officer, upon finding a juvenile in violation of subsection (B)(1) of this section, shall:
  - (a) ascertain the name and address of the juvenile; and
  - (b) order the juvenile to go promptly home by a direct route.
- (2) Notwithstanding subsection (D)(1) of this section, a police officer, upon finding a juvenile in violation of subsection (B)(1) of this section, may:
  - (a) issue the juvenile a citation for the offense and deliver the juvenile to a parent; or
  - (b) take the juvenile into custody and deliver the juvenile to a holding location if:
    - (i) a parent to whom custody of the juvenile may be released cannot be located; or
    - (ii) reasonable grounds exist to believe the juvenile has engaged in delinquent conduct or conduct indicating a need for supervision in accordance with Sections 51.03 and 52.01 of the Texas Family Code.
- (3) If a parent cannot be located or fails to take charge of the juvenile, the juvenile shall be released to the appropriate juvenile authorities or responsible adult.
- (4) A police officer finding any violations of any provisions of this section shall file a written report on the incident if a citation is issued.

(E) *Penalties.*

- (1) A person who violates a provision of this section is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable as follows:
  - (a) First offense: a fine not to exceed \$100.00;
  - (b) Second offense: a fine not to exceed \$250.00;
  - (c) Third and subsequent offenses: a fine not to exceed \$500.00.

- (2) The Municipal Court, in its discretion, may order a defendant who is unable to pay all or part of a fine or costs, to discharge all or part of such fine or costs by performing community service.
- (3) When required by Section 51.08 of the Texas Family Code, as amended, the municipal court shall waive original jurisdiction over a minor who violates subsection (B)(1) of this section and shall refer the juvenile to juvenile court.

(F) *Evaluation Period and Report*

- (1) On or before the first anniversary of the date of the effective date of this section, the city manager shall appoint a committee comprised of at least two residents of the City of Bryan and two representatives from the Bryan Police Department. The committee shall evaluate the effectiveness of this section and provide a written report to the city council. The report shall specifically include the following evaluation criteria and information for the 12 month period immediately following the effective date of this section:
  - (a) The number of curfew violations by age, gender, ethnicity and race;
  - (b) The penalties assessed by the Municipal Court;
  - (c) The number of Uniform Crime Rate crimes reported during the 12 month period following the effective date of this section compared to the same crimes reported for the same time period in the previous five years;
  - (d) The number of arrests of juveniles for other crimes during the 12 month period following the effective date of this section compared to the arrests reported for the same time period in the previous five years;
  - (e) The number of graffiti incidents reported during the 12 month period following the effective date of this section compared to the number of graffiti incidents reported for the same time period in the previous five years;
  - (f) The number of runaways reported during the 12 month period following the effective date of this section compared to the number of runaways reported for the same time period in the previous five years;
  - (g) The practicality of enforcing this section and any problems with enforcement identified by the committee, and any recommendations related thereto;

(h) Recommendations concerning the effectiveness of and need for this section.

(2) The committee report shall be provided to the city council which shall consider the report in determining whether to abolish, continue or modify this section.

(G) *Sunset Provision.*

This ordinance shall expire on May 23, 2007 unless extended by an ordinance adopted on second and final reading on or before May 22, 2007.

#### Section 2.

That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

#### Section 3.

The Bryan City Code, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

#### Section 4.

If any section, paragraph, sentence, clause, phrase or word of this ordinance is declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this ordinance are declared to be severable.

#### Section 5.

It is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Section 551.001 et seq., Texas Government Code, and that advance public notice of the time, place and purpose of said meetings was given.

#### Section 6.

It is the intention of the City Council that, this ordinance shall become a part of the Bryan City Code and it may be renumbered and codified therein accordingly.

#### Section 7.

This ordinance shall become effective after its second and final publication, said date being January 2, 2006.

PRESENTED AND GIVEN first reading the \_\_\_\_ day of \_\_\_\_\_, 2005, at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, passed and approved on the \_\_\_\_ day of \_\_\_\_\_, 2005, by a vote of \_\_\_\_ ayes and \_\_\_\_ noes at a regular meeting of the City Council of the City of Bryan, Texas.

ATTEST:

CITY OF BRYAN

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Mary Lynne Stratta, City Secretary

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Ernie Wentrcek, Mayor

APPROVED AS TO FORM:

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Michael J. Cosentino, City Attorney